

1 BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
2 STATE OF MONTANA

3
4 IN THE MATTER OF THE CIVIL
5 PENALTY IMPOSED AGAINST
6 SAVANNAH FAMILY INSTITUTE

7 FINDINGS OF FACT, CONCLUSIONS OF LAW,
8 ORDER, AND MEMORANDUM OPINION

9 These informal contested case proceedings were filed before the
10 Commissioner of Political Practices (Commissioner) to consider the appeal of the
11 principal referenced above. Pursuant to the provisions of Montana Code Annotated
12 § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty
13 resulting from its late filing of a lobbying disclosure report. The principal filed a
14 written Waiver of Hearing waiving its right to an in-person hearing, and submitted a
15 written statement for the Commissioner's consideration.

16 Based on the written submissions of the principal, the documents of record in
17 the Commissioner's file, and the applicable law, the Commissioner makes the
18 following findings of fact, conclusions of law, and order.

19 **FINDINGS OF FACT**

20 1. Savannah Family Institute is a principal registered with the
21 Commissioner.

22 2. The 2003 Montana Legislature passed House Bill 38 and the governor
23 signed it into law. The law took effect on February 18, 2003. House Bill 38, now
24 codified at § 5-7-306, MCA, establishes civil penalties that are required to be
25 assessed against any person who fails to file lobbying disclosure reports within the
26 time required by law.

1 3. The initial 2007 lobbying disclosure report for Savannah Family Institute
2 was required to be filed no later than February 15, 2007.

3 4. On January 29, 2007 the office of the Commissioner sent an email to all
4 principals, including Savannah Family Institute. The email advised principals that a
5 lobbying financial disclosure report covering the month of January, 2007 was
6 required to be filed by February 15, 2007. The email referenced the appropriate
7 form that was required to be filed, known as a form L-5A, and noted that it was
8 available for download on the Commissioner's website. Citing the provisions of §
9 5-7-208(4), MCA, the email stated: "A report must be filed in this office even
10 though neither lobbying nor incurring of lobbying expenses may have occurred."

11 5. Savannah Family Institute failed to file its L-5A on or before February 15,
12 2007.

13 6. On February 20, 2007, the Commissioner sent a letter to Mary McCue
14 stating that the principal's January L-5A report was due February 15, 2007, but had
15 not been received. The letter stated that a civil penalty started being assessed on
16 February 16, 2007, at \$50 per day, and would continue until the report was filed or
17 until the penalty amount reached \$2,500. The letter urged the principal to fax the
18 delinquent report immediately, followed by a hard copy.

19 7. On February 22, 2007, the principal filed its report. Because the report
20 was filed 4 days late, a \$200 civil penalty was assessed by the Commissioner.

21 8. Savannah Family Institute requested a hearing to contest the civil penalty.
22 The Commissioner issued a Notice of Agency Action and Opportunity for Hearing
23 on May 01, 2007. Savannah Family Institute filed a written Waiver of Hearing and
24 submitted a written statement for the Commissioner's consideration.

1 4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed
2 with the Commissioner “by February 15th of any year the legislature is in session . . .
3 .” The report “must include all payments made in that calendar year prior to
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the
5 reporting period, “the principal shall file a report stating that fact.”

6 5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Savannah
7 Family Institute to file a report for January, 2007, even if Savannah Family Institute
8 made no lobbying payments during the reporting period.

9 6. As explained below, Savannah Family Institute provided information and
10 evidence establishing factors or circumstances in mitigation that justifies waiver of
11 the civil penalty assessed by the Commissioner. § 5-7-306(3), MCA.

12 **MEMORANDUM OPINION**

13 The filing deadlines for lobbying disclosure reports are established by statute,
14 and cannot be extended. Moreover, a careful reading of the reporting requirements
15 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period
16 was required to be filed, regardless whether any payments were made during the
17 reporting period. Nevertheless, in view of the potentially misleading language on
18 form L-5A (which has since been clarified), it is appropriate to exercise the
19 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

20 Although I am waiving the penalty in this particular case, I urge principals to
21 carefully review the statutory filing requirements to ensure that they are in
22 compliance with the law and to avoid the assessment of civil penalties in
23 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed
3 against Savannah Family Institute is waived.
4

5 DATED this 26th day of July, 2007.

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8 Dennis Unsworth
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Mary McCue
17 Savannah Family Institute
18 PO Box 4416
19 Helena MT 59604

20 DATED: June 26th, 2007

21 _____
22 Kym Trujillo
23 Data Supervisor
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